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HERE FOR YOU AND YOUR FAMILY



**Your Guide To  
Probate &  
Estate Administration**

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# Welcome To Timbrell Law

The weeks and months after a death can be an emotional and challenging time. However, if you are dealing with a deceased estate you need to be prepared; to equip yourself for the difficult task ahead or at least have a better understanding of the role you are expected to fill.

Acting as a personal representative comes with specific duties and responsibilities. It is not something that should be undertaken lightly. Mistakes can lead to personal liability, where ignorance and lack of understanding are no excuse.

The fundamental question that personal representatives often ask me is "Do I need to enlist support?". My honest response is that only you can answer that question.

This booklet will give you a brief insight into the process of estate administration and help you understand the various support options available. You may ultimately decide to do it yourself, seek help with obtaining the grant only or opt for a complete administration service. What matters is that you are happy and comfortable with your choice.

I hope that you can use the information provided to work out the level of support that you need.

Alice Timbrell  
**Solicitor**



# Your Guide To Probate & Estate Administration

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If you would like further guidance on obtaining probate or estate administration, please don't hesitate to get in touch. We offer free initial consultations for all matters to help you decide how to proceed. We are available on **01242 420744**, or you can email us at **[contact@timbrell-law.com](mailto:contact@timbrell-law.com)**.





# The Practical Steps To Take When Someone Dies

Before you can even think about dealing with the estate of someone who has died, some important practical steps should be taken.

## Step 1: Registering the death and arranging the funeral

These two actions are usually dealt with very quickly after someone has died. Your chosen funeral director will be there to support you and guide you through the process.

Generally speaking, reasonable funeral expenses, including the cost of a gravestone, flowers and refreshments, are payable from the deceased's estate. What is reasonable is a question of fact in each case but will typically be tied to the size of the deceased's estate as a whole. If the deceased purchased a prepaid funeral plan or took out funeral insurance, this may cover some or all of the costs.

**TOP TIP:** If there isn't a funeral plan, you may be able to secure direct payment from the deceased's bank account.

## Step 2: Securing the deceased's home and possessions

If the deceased lived alone, you should take practical steps to secure their property. For example, changing the locks, cancelling deliveries, hiding valuables and adjusting the heating. If the deceased lived in a residential or nursing home, you will need to remove their possessions and store these safely.

You should also collect the deceased's papers ready for probate. This is a very important task. Documents of interest would include bills, contracts, loan papers, insurance plans, pensions documents, employment details, tax papers, car logbooks and any original paperwork, certificates or deeds relating to assets (e.g. for shares or property). If in doubt, preserve all documents you find.

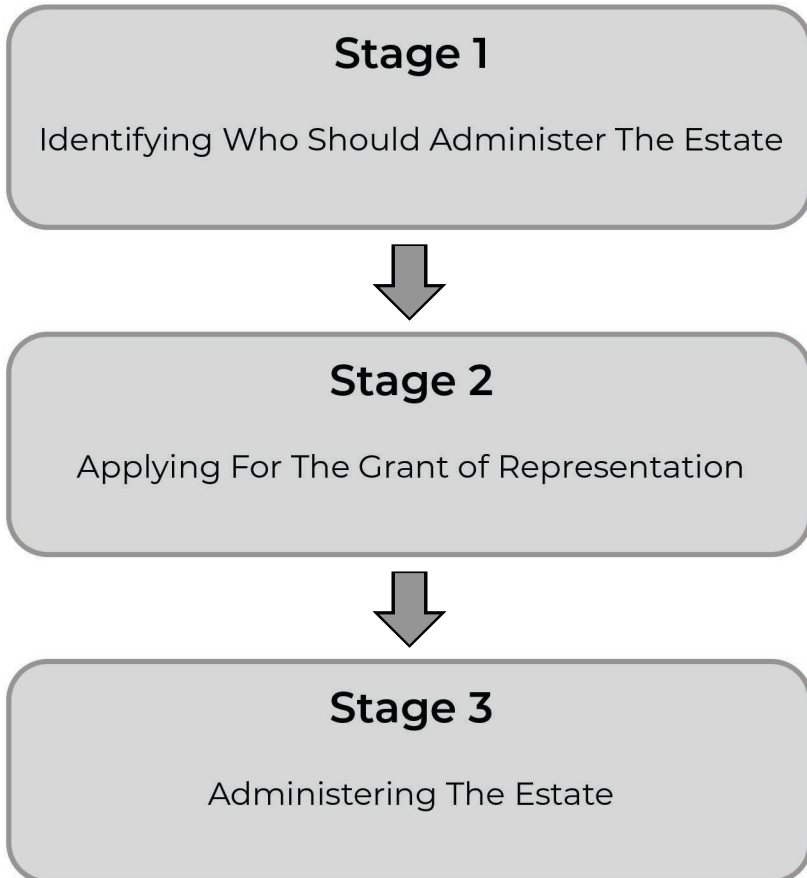
## Step 3: Informing the insurers

You should notify the current building and contents insurers of the death and let them know if the property will be unoccupied. You may need to take out a new policy if the cover is insufficient.

# Preparing For The Three Stages Of Estate Administration

The process of winding up the affairs of someone who has died is known as “estate administration”.

Estate administration can be broken down into three stages:



# Stage 1: Identifying Who Should Administer The Estate

When a person dies, the first question to ask is whether there is a valid Will. Finding the Will is essential because it will confirm who inherits the estate and who is responsible for dealing with administration.

If there is a Will, the “**executors**” will have the authority to deal with the deceased’s assets. *Remember even if you have been appointed as an executor, you can choose not to act.*

If the deceased died without a Will (i.e. intestate), the process is more complicated. An application for a Grant of Letters of Administration will need to be made to bestow authority on an “**administrator**”. There are rules which determine who can be an administrator.

The term “**personal representative**” covers both executors and administrators.

## Looking for the Will

The best place to look for a Will is in the deceased’s home. If there is a Will, there will usually be a copy amongst their possessions. If the Will was prepared by a professional, they should be contacted as they may be storing the original document.

If you cannot find the Will (or a copy of it) in the deceased’s home, you may wish to pursue the following lines of enquiry:

- contact any professional advisers linked to the deceased, such as accountants, IFAs and solicitors;
- check with the deceased’s bank;
- check the Will archives of the Principal Registry of the Family Division;
- conduct a search of commercial Will registers/storage providers; or
- advertise for the lost Will in local papers.

Once you have located a Will, you will need to check that it is valid. For example:

- was the Will signed in the presence of two witnesses?
- are there any handwritten amendments?
- does the Will deal with the entire estate?

If you have any concerns, seek professional advice.

## What are the duties and responsibilities of a personal representative?

As a personal representative, you are under a duty to ensure that the estate is administered and distributed correctly.

To be able to meet your duties you will need to understand:

- if there is no Will, how the intestacy rules apply to the estate; or
- where there is a Will, how the terms of the Will affect the administration and the provision made for the beneficiaries.

You will also need to be confident that you understand the extent of your powers, i.e. what you can and cannot do. If there is no Will, you will need to rely on powers set out in case law and Acts of Parliament. Without professional assistance, this information may be difficult to find.

### The risk of personal liability

As a personal representative, if you fail to pay an unknown creditor or a beneficiary you are at risk of being held personally liable to that person. Criminal and civil sanctions can also arise if a Will or Codicil is concealed or false information is provided about the beneficiaries, the assets of the estate or any lifetime gifts made by the deceased.

If inaccurate information is provided for tax purposes, HMRC can impose substantial penalties on personal representatives.

### Seeking Support

Being unfamiliar with the estate administration process is no excuse for non-compliance. If you are not comfortable with the responsibility of administering an estate and are worried about being held personally liable, you can seek support from a professional.

If you would like further guidance on your role as a personal representative, please don't hesitate to get in touch. We offer free initial consultations for all matters to help you decide how to proceed. We are available on **01242 420744**, or you can email us at **[contact@timbrell-law.com](mailto:contact@timbrell-law.com)**.



# Stage 2: Applying For The Grant Of Representation

## What is a Grant of Representation?

To be able to release assets to the personal representatives, asset holders will typically require proof that those individuals are entitled to deal with the estate. This proof takes the form of a court order, known as a “**Grant of Representation**”.

There are several different types of Grant. Where there is a Will, the Grant is called a “**Grant of Probate**”; hence the phrase “applying for probate”.

### How to find out if a Grant of Representation is required?

The only way to accurately find out if a Grant is needed to deal with a particular asset is to ask the asset holder. Every organisation will have different rules.

A Grant will normally be required where:

- the deceased failed to make a pension nomination;
- the deceased took out a life policy which was not written into trust;
- the deceased held stocks and shares or any other investments;
- there is a property which needs to be transferred or sold; or
- there are savings with any one organisation totalling more than £50,000.

## What steps need to be taken to obtain the Grant of Representation

To get a Grant, you will need to accurately value the estate as at the date of death to calculate and settle any inheritance tax (IHT) due. This means identifying the assets and debts in the estate and preparing an IHT return.

You will need to make sure that you claim all possible IHT reliefs and that you correctly identify which assets fall within the estate for tax purposes. For example, where the deceased failed to survive a gift of more than £3,000 by 7 years, this may need to be included in the estate for IHT.

Once the IHT return is ready, you can make a formal application to the Probate Registry for the Grant. The application process involves signing a statement of truth, submitting the original Will (if there is one) and paying the probate fee.

If there is IHT to pay, you will need to pay at least some of it before you can get the Grant.



# Stage 3: Administering The Estate



On receipt of the Grant, you will be able sell and transfer assets and close the deceased's accounts. Once you are in receipt of these funds, you will need to pay off any debts, outstanding inheritance tax, funeral and administration expenses and any legacies (i.e. gifts) owed under the Will or the rules of intestacy.

You will also be responsible for any income or capital gains tax arising during the administration period. You may even need to submit an estate tax return.

The balance remaining at the end of the administration will be distributed to the beneficiaries.

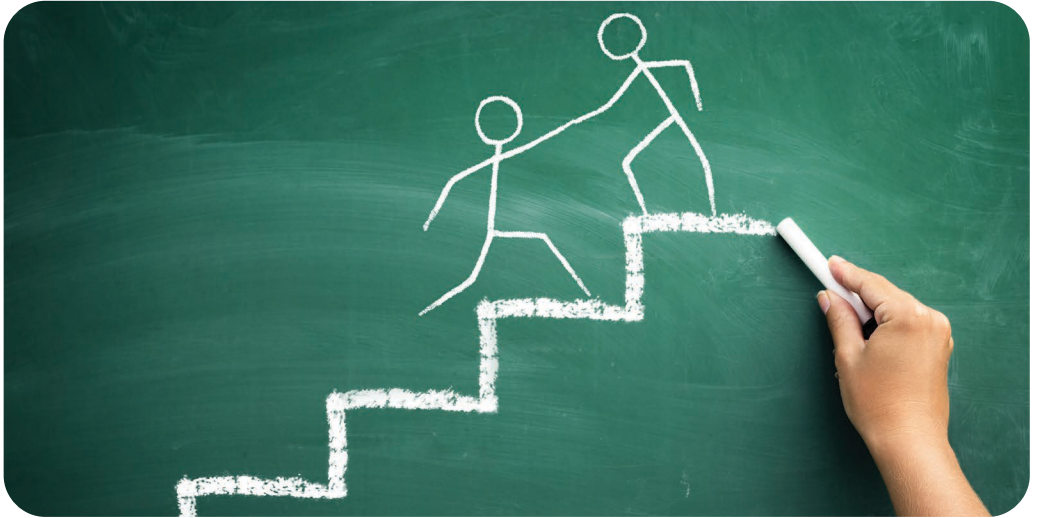
If there are continuing trusts under the Will or as a result of the rules of intestacy, you may need to step into the role of a trustee.

*Being a trustee is an entirely different role accompanied by a new set of responsibilities. As a trustee you will hold the legal title to the trust assets for the benefit of those named.*

*As a trustee you are placed in a position of trust and must always act in the best interests of the beneficiaries when exercising your powers. The duties and powers of a trustee are not contemplated here.*



# How To Decide If You Need Support



Deciding whether to take on an estate administration yourself or to seek the support of a professional can be a difficult decision. Some personal representatives choose only to seek support in obtaining the Grant of Representation. Others prefer for a professional to guide them through the entire process.

DIY probate does not mean that you can cut corners. You are legally responsible for ensuring that the estate is administered and distributed correctly. If you fail to fulfil this duty, you could be held personally liable.

We recommend always seeking advice if any of the following apply:

- The original Will is lost or the terms are unclear.
- There is no Will and you are unclear of how the rules of intestacy apply.
- You suspect there is a problem with the Will, i.e. there are missing pages, it is not signed correctly or witnessed.
- The Will or rules of intestacy leave money in a trust.
- The beneficiaries include children under the age of 18.
- The estate is subject to inheritance tax.
- The deceased had an interest in a business, agricultural land or owned foreign property or assets.



# Top Tips: How To Reduce Professional Fees During Estate Administration

## 1 - Be proactive before meeting with your solicitor for the first time

If you have already undertaken some of the work, show them. If you can provide a list of asset holders with account numbers and references, this will help.

## 2 - Respond promptly to correspondence

Replying without delay will ensure that your solicitor does not have to chase you. The same goes for signing and returning documents. Not only will this reduce the cost, but also mean the administration moves faster.

## 3 - Carry out as many of the non-legal tasks as possible:

- Be available to meet valuers and estate agents.
- When the time comes to clear the property, arrange for clearance rather than asking the solicitor to do this.
- Field questions from the beneficiaries directly and manage their expectations early.

### Important questions that you should ask your probate solicitor

Before you officially instruct a professional, you should be clear about the scope of their service. You may wish to ask:

#### What does their service include?

Your solicitor should give you a clear breakdown of the tasks that they are going to carry out on your behalf, what services need to be carried out by third parties and what you will need to do personally.

#### How do they charge for their service?

Best practice is for your solicitor to carefully consider the assets in the estate and their ultimate distribution to provide you with a tailored estimate for the administration.

#### How often will they update you?

You should agree in advance the service level you want, whether this is a regular monthly update or ad hoc next step instructions. Taking the time to discuss your expectations at the outset will ensure that you and your adviser are on the same page.



# Top Tips: How To Prepare For Estate Administration

## **1 - Purchase a good number of death certificates when you register the death**

You will need these to notify asset holders; a shortage of death certificates can cause a delay.

## **2 - Conduct a thorough search for the Will as soon as possible**

If the Will is missing, it can take time for other professionals such as accountants, local solicitors or banks to check their archives.

## **3 - Collect all the personal papers you can find in the deceased's home**

You never know what might turn out to be important.

## **4 - Consider placing a mail redirection**

Placing a mail redirection on the deceased's home will ensure that any new correspondence relating to unknown assets and liabilities comes to you.

## **5 - Keep copies of all estate expenses paid for by you and ask family members to do the same**

You will need this evidence to claim a reimbursement from the estate later.

## **6 - Consider opening a separate bank account for receipt of estate funds**

If you are using a solicitor for the full administration, then you are likely to be able to use their client account.

## **7 - Keep copies of all correspondence you have with asset holders**

If you speak to a third party on the telephone about the estate, remember to make a note of the call. These notes will help jog your memory during the administration process and, if you seek support, will help your adviser find out what you have already achieved.

## **8 - Think about keeping the beneficiaries updated**

A beneficiary should be informed promptly of their entitlement in the estate; however, their right to further information depends on the nature of their interest. In our experience keeping beneficiaries updated regularly reduces the risk of conflict.





# How Can Timbrell Law Support You?

At Timbrell Law Solicitors, we have years of experience and pride ourselves in being able to help wind up estates with as little disruption as possible.

We offer two levels of assistance tailored to how much or how little of the day-to-day administration you wish to deal with personally:

- **Grant Only Application;** or
- **Complete Estate Administration.**

## **Our Complete Estate Administration Service Includes:**

- Checking the validity of any Will in existence. Where there is no Will, applying the intestacy rules to identify the Administrators and Beneficiaries and their entitlements.
- Identifying, verifying and valuing all assets based in England and Wales.
- Applying to the Probate Registry to obtain the Grant of Representation.
- Completing the appropriate Inheritance Tax Return, including claiming any relevant exemptions and arranging for direct payment from the deceased's bank (where possible).
- Collecting in the Estate assets or their sale value (excluding the sale of property).
- Paying any debts and liabilities from the Estate.
- Calculating and paying any Income or Capital Gains Tax from the Estate.
- Ensuring the accurate distribution of the Estate.

**If you need to support, we can help. Call for your free initial consultation today.**



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